

Message Text

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ACTION AF-08

INFO OCT-01 EUR-12 IO-13 ISO-00 SSO-00 NSCE-00 USIE-00

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O R 121340Z MAY 76

FM AMEMBASSY CAPE TOWN

TO SECSTATE WASHDC IMMEDIATE 5183

INFO AMCONSUL DURBAN

AMCONSUL JOHANNESBURG

AMEMBASSY LONDON

AMEMBASSY LUSAKA

AMEMBASSY PRETORIA

US MISSION USUN NEW YORK 1110

UNCLAS CAPE TOWN 0564

E.O.11652:N/A

TAGS: SF, PINT, PINS

SUB: BAR ASSOCIATIONS PROTEST NEW SECURITY

LEGISLATION

REF: CAPE TOWN 560

1. CAPE BAR COUNCIL AND JOHANNESBURG BAR COUNCIL HAVE COME OUT OPPOSING PROPOSED SECURITY LAW, AMENDMENTS, ACCORDING TO CAPE TIMES MAY 12. GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA, REPRESENTING EIGHT INDIVIDUAL COUNCILS, HAS ISSUED NO COMMENT AS YET, NOT HAVING HAD OPPORTUNITY FOR JOINT DISCUSSION OF DRAFT BILL.

2. CAPE BAR COUNCIL RECOGNIZED THAT IN TIMES OF NATIONAL EMERGENCY IT MIGHT BE NECESSARY TO DEVIATE FROM PRINCIPLES NORMALLY APPLIED IN ADMINISTRATION OF SOUTH AFRICAN JUSTICE, BUT OPPOSED CURRENT PROPOSALS. COUNCIL EXPRESSED CONCERN AT

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VAGUENESS OF THE CONCEPT "ACTIVITIES WHICH ENDANGER THE

SECURITY OF THE STATE OR MAINTENANCE OF PUBLIC ORDER"
AND AT EXTENSION POWER OF EXECUTIVE TO DETAIN
PEOPLE WITHOUT TRIAL AND WITHOUT ANY PRECEDING OPPORTUNITY
TO MAKE REPRESENTATIONS. COUNCIL THOUGHT THAT SUPREME COURT
OF SOUTH AFRICA AND NOT MEMBERS OF EXECUTIVE SHOULD BE ENTRUSTED
WITH RESPONSIBILITY OF DECIDING WHETHER PERSON WAS GUILTY OF
BEHAVIOR OF THAT TYPE AND WHETHER HE SHOULD BE DEPRIVED OF
FREEDOM. REVIEW COMMITTEE OFFERED NO EFFECTIVE PROTECTION:
MEMBERS WOULD NOT HAVE THE INDEPENDENCE OF JUDGES, AND MINISTER
COULD IGNORE THEIR RECOMMENDATIONS. COUNCIL PREFERRED THAT REVIEW
COMMITTEE BE COMPOSED OF SUPREME COURT JUDGES AND THAT THEIR
RECOMMENDATIONS BE BINDING. POWERS OF DETENTION WITHOUT
TRIAL SHOULD BE GIVEN TO EXECUTIVE ONLY WHEN THERE WAS CLEAR
NATIONAL EMERGENCY AND ONLY FOR SO LONG AS IT EXISTED.

3. CAPE TIMES PRINTS FULL TEXT OF JOHANNESBURG BAR COUNCIL
STATEMENT AS FOLLOWS:

"THE PROMOTION OF STATE SECURITY BILL CONTAINS PROVISIONS
WHICH ARE CONTRARY OF THE FUNDAMENTAL PRINCIPLES OF OUR LEGAL
SYSTEM AND SHOULD BE CONDEMNED BY ALL LAWYERS.

"LEGISLATIVE PROVISIONS--PREVIOUSLY CONDEMNED BY BAR
COUNCILS--FOR THE PROHIBITION OF ORGANIZATIONS, THE CURTAIL
MENT OF FREEDOM OF SPEECH, FREEDOM OF MOVEMENT AND FREEDOM
OF ASSOCIATION, THE DETENTION OF WITNESSES AND THE REFUSAL
OF BAIL ARE TO BE RE-ENACTED--IN SOME RESPECTS IN A MORE
STRINGENT FORM.

"AND NOW, IN ADDITION, IT IS PROPOSED THAT THE MINISTER
OF JUSTICE BE EMPOWERED TO IMPRISON ANY PERSON WITHOUT
TRIAL IF HE IS SATISFIED THAT SUCH PERSON ENGAGES IN
ACTIVITIES WHICH ENDANGER THE SECURITY OF THE STATE OR THE
MAINTENANCE OF PUBLIC ORDER.

" A REVIEW COMMITTEE IS TO BE SET UP TO INVESTIGATE ANY
ACTION TAKEN BY THE MINISTER TO IMPRISON PERSONS WITHOUT
TRIAL BUT THIS COMMITTEE WILL IN FACT HAVE NO POWERS OF
REVIEW.

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"ITS TASK WILL BE TO CONSIDER ALL FACTS AND
REPRESENTATIONS SUBMITTED TO IT AND TO MAKE SUCH
RECOMMENDATIONS TO THE MINISTER AS IT MAY THINK FIT.

"BUT THE MINISTER WILL NOT BE OBLIGED TO DISCLOSE TO THE
REVIEW COMMITTEE THE EVIDENCE UPON WHICH HE HAS ACTED NOR
WILL HE BE OBLIGED TO GIVE EFFECT TO ANY RECOMMENDATIONS
MADE BY THE COMMITTEE.

"ANY PROCEEDINGS BEFORE THE REVIEW COMMITTEE WILL BE CONDUCTED IN PRIVATE AND ITS RECORDS WILL BE KEPT SECRET.

" THE IMPRISONED PERSON WILL BE GIVEN THE RIGHT TO MAKE REPRESENTATIONS TO THE REVIEW COMMITTEE BUT THIS RIGHT WILL BE OF LITTLE VALUE AS HE WILL NOT BE ENTITLED TO KNOW THE EVIDENCE UPON WHICH THE MINISTER HAS ACTED AND WILL THUS BE UNABLE TO TEST THE RELIABILITY OF SUCH EVIDENCE OR TO REBUT IT.

"IT HAS FOR MANY YEARS BEEN IMPLICIT IN THE LEGAL SYSTEMS OF ALL CIVILIZED COUNTRIES THAT NO MAN SHOULD BE PUNISHED OR OTHERWISE MADE TO SUFFER BY THE STATE EXCEPT FOR A DISTINCT BREACH OF THE LAW PROVED IN THE ORDINARY MANNER BEFORE THE COURTS OF THE LAND.

"TRADITIONALLY COURTS IN SOUTH AFRICA HAVE ACTED AS PROTECTORS OF THE RIGHTS OF INDIVIDUAL CITIZENS AND THE PROPER ADMINISTRATION OF JUSTICE REQUIRES THAT SUCH PROTECTION BE GIVEN EVEN AGAINST THE EXECUTIVE.

"IN A PRESS STATEMENT ISSUED IN APRIL,1963, THE JOHANNESBURG BAR COUNCIL SAID:

"THE METICULOUS PROCEDURE FOLLOWED BY THE CRIMINAL COURTS IN THIS COUNTRY AND ELSEWHERE HAS BEEN BUILT UP OVER THE YEARS BECAUSE EXPERIENCE HAS SHOWN THAT,WITHOUT IT, NO TRIBUNAL,HOWEVER CONSCIENTIOUS,CAN BE SURE THAT IT IS NOT PUNISHING INNOCENT PERSONS."

"THE LEGISLATION PROPOSED IKN THE PROMOTION OF STATE SECURITY BILL AS PART OF THE PERMANENT LAW OF THE LAND
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NEGATES THIS BASIC PRINCIPLE AND BY SO DOING SUBVERTS THE PROPER ADMINISTRATION OF JUSTICE."

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